



STATE OF NEBRASKA
Office of the Attorney General

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DOUGLAS J. PETERSON
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December 17, 2021

Loreen Reynante
[REDACTED]

RE: *File No. 21-R-138; Papillion La Vista Community Schools; Loreen Reynante, Petitioner*

Dear Ms. Reynante:

We are writing in response to your initial correspondence received by this office on September 29, 2021, and the supplemental information you provided us on December 2, 2021.¹ You have requested the assistance of the Attorney General with respect to a public records request submitted to Papillion La Vista Community Schools ("District") on or about September 10, 2021. On December 6, 2021, the undersigned spoke to the District's attorney, Karen Haase, KSB School Law, about your correspondence and, at our request, Ms. Haase provided our office with information pertaining to this matter. We considered your correspondence to be a petition under Neb. Rev. Stat. § 84-712.03(1)(b) of the Nebraska Public Records Statutes ("NPRS"), Neb. Rev. Stat. §§ 84-712 through 84-712.09 (2014, Cum. Supp. 2020, Supp. 2021). Our findings and conclusion in this matter are set out below.

RELEVANT FACTS

On or about September 10, 2021, you submitted a public records request to the District seeking the following:

[T]he entire school district salary and benefits package. Name, title amount for each employee both administrative and non-administrative. All teachers, principals, guidance counsels [*sic*], janitorial, para staff too. Basically, anyone that

¹ As we informed you by letter dated October 1, 2021, our investigation of this matter would begin once we received your public records request to the District and all other correspondence you may have received from the District's attorney.

is paid by the taxpayer.²

Ms. Haase responded to your request on September 17. She indicated that the District estimated the cost to produce the requested records to be \$2,500, with fifty percent of the amount required in advance to proceed with your request. Ms. Haase further indicated that the estimated time in which to complete the request would be 30 business days once the District received your deposit.

By letter to Ms. Haase dated September 27, 2021, you clarified that you were seeking “the names and all the salary and benefit compensation information for all the employees that are paid for by the citizens of this school district for school year 2021-2022.” On September 30, District Director of Communications Annette Eyman responded to your request. Ms. Eyman provided you an invoice estimating the total cost of production at \$300 (five hours of technology time). She also indicated that 50% of the charges must be paid prior to beginning the work, with the remaining balance due before any records are provided. Ms. Eyman indicated that “[t]he remaining balance will be adjusted if the total estimated amount of time is less than the amount shown on the invoice.” Ms. Eyman further indicated that it would take five weeks to fulfill your request once the deposit is received. In response, you informed Ms. Eyman that you would not be paying anything for the records, and that you “simply want the exact same information that [you] requested last year. No more no less. There was no charge last year and should never be a charge.”

According to information we received from Ms. Haase, the estimate “was strictly 5 hours of time for [the District’s] Technology team to pull the report together.” Because you requested data for every employee, data would need to be extracted from different sources and put in a consistent format. A verification of the data, estimated to take approximately 4-5 hours, must then be done by District staff once the report is run. However, the District did not charge you for that time. Staff represents that, based on previous experience with such requests, the estimate is reasonable. In addition, District staff only requested fifty percent of the estimate. In the event the total time spent is less than the estimated time, staff will adjust the final bill accordingly. Also, by way of background, in the past the Omaha World-Herald had requested the data, which the District compiled. Consequently, the District had the data and could share it with you at no cost. However, the newspaper has not requested the data for several years, so the data does not exist in a producible format, and District staff is required to build the data for you. Another factor noted by District staff is the volume of public records requests received during the COVID-19 pandemic. In light of the foregoing, staff represents that it can no longer fulfill data requests without charging for the time involved.

² You also requested records “pertaining to money received by Google, Facebook and Amazon for the 2021/2022 school year and 2019/2020” and the COVID-19 money received by the District. You abandoned those requests by letter to Ms. Haase dated September 27, 2021.

In your correspondence, you indicate that you are frustrated by these events. You assert that you are requesting something that you should be able to see as a taxpayer. You also believe that you are getting the “run around” from the District.

DISCUSSION

The NPRS generally allow Nebraska citizens and other interested persons the right to examine public records in the possession of public agencies during normal agency business hours, to make memoranda and abstracts from those records, and to obtain copies of public records in certain circumstances. Section 84-712.03(1)(b) requires the Attorney General to determine, among other things, “whether the fees estimated or charged by the custodian are actual added costs or special services charges as provided under section 84-712.”

Neb. Rev. Stat. § 84-712(3) sets out the allowable costs record custodians may charge to produce copies of public records:

(b) Except as otherwise provided by statute, the public body, public entity, or public official which is the custodian of a public record may charge a fee for providing copies of such public record pursuant to subdivision (1)(b) of this section, which fee shall not exceed the actual added cost of making the copies available. For purposes of this subdivision, (i) for photocopies, the actual added cost of making the copies available shall not exceed the amount of the reasonably calculated actual added cost of the photocopies, which may include a reasonably apportioned cost of the supplies, such as paper, toner, and equipment, used in preparing the copies, as well as any additional payment obligation of the custodian for time of contractors necessarily incurred to comply with the request for copies, (ii) for printouts of computerized data on paper, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of computer run time and the cost of materials for making the copy, and (iii) for electronic data, the actual added cost of making the copies available shall include the reasonably calculated actual added cost of the computer run time, any necessary analysis and programming by the public body, public entity, public official, or third-party information technology services company contracted to provide computer services to the public body, public entity, or public official, and the production of the report in the form furnished to the requester. (Emphasis added.)

(c) The actual added cost used as the basis for the calculation of a fee for records shall not include any charge for the existing salary or pay obligation to the public officers or employees with respect to the first four cumulative hours of searching, identifying, physically redacting, or copying. A special service charge reflecting the calculated labor cost may be included in the fee for time required in excess of

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four cumulative hours, since that large a request may cause some delay or disruption of the other responsibilities of the custodian's office

In addition, § 84-712(3)(f) allows public bodies to request a deposit prior to fulfilling a request if copies are estimated to be more than \$50.

The District has provided this office sufficient information about its cost estimate to satisfy the review required under § 84-712.03(1)(b). The \$300 constitutes the "actual added cost" for the technology staff to run the report. Other costs that may have constituted a special services charge were waived by the District. In addition, the District only requested one-half of the deposit, and has represented that adjustments will be made to the balance in the event the technology team does not take five hours to run the requested report.

We understand that you are frustrated by this process, particularly since you have received similar information in the past at no cost. However, public bodies are expressly authorized to charge for producing public records, and may request a full deposit prior to beginning any work on a records project. Keep in mind that you have always have the option to modify your request. We would also suggest that you contact District officials to inquire as to the records the District may already have compiled which could be provided to you at little to no cost.

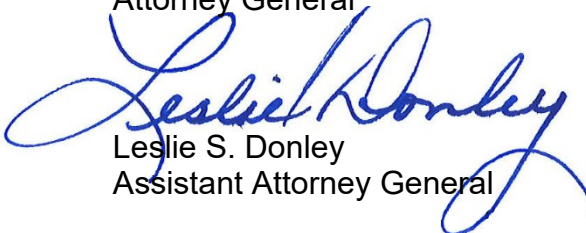
CONCLUSION

Based on the foregoing, we conclude that the \$300 estimate constitutes the actual added cost of the technology team to produce the requested report. We also find that the District did not violate the NPRS or act in bad faith in handling your public records request. As a result, no further review by this office is necessary and we are closing this file.

If you disagree with the conclusion reached above, you may wish to review the other remedies available to you under Neb. Rev. Stat. § 84-712.03.

Sincerely,

DOUGLAS J. PETERSON
Attorney General



Leslie S. Donley
Assistant Attorney General

c: Karen Haase (via email only)
49-2841-30